STATEMENT BY

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on H.R.1013 and H.R. 1371

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The amendments proposed by H.R. 1013 and H.R. 1371 go to the heart of intelligence activities that extend beyond the collection of information, a category commonly known as covert action. And they go too far. Covert action is a critically important tool of foreign policy. When our vital international interests are at stake, the President must be able to act covertly when circumstances would make overt action unwise or impossible. There are times when our vital interests require action, but the revelation or acknowledgment of US involvement would increase the possibility of international confrontation or hinder related efforts on the political or diplomatic front. The President is in the best position to determine when to incorporate a covert option into the implementation of a particular policy.

Americans can reasonably disagree about the specific decisions of a President to employ covert action, but few would assert that no circumstances justify such activity. In some situations, it may be the only means of achieving the highest humanitarian and political objectives.

Every Administration should approache covert action with two operating principles. First, before beginning any covert program, we must be confident that it is consistent with U.S. law, policy, interests and national values.

Secondly, any program of secret action by the government to shape events should be something the American people would support. As President Reagan recently said, we must see that if and when a covert action operation is disclosed, the American people will say, "that makes sense."

To ensure this, covert action programs must undergo continuing comprehensive review. This process must ensure that foreign policy, together with practical and legal considerations, are fully taken into account in covert action decisions. Further, the process must take into account the need for support from, and accountability to, Congress; both are indispensable to the success and sustainability of a covert program. By National Security Decision Directive 266, which he sent to Congress with his message of March 31, 1987, the President reaffirmed that "all requirements of law concerning covert activities, including those requirements relating to presidential authorization and congressional notification, be addressed in a timely manner and complied with fully." (Attached) The Executive Branch thus is committed to both the

letter and the spirit of the legally mandated review and oversight functions of the congressional intelligence committees.

Covert action also must fit within a specific, articulated and well understood foreign policy framework. The President's Directive implementing the recommendations of the Tower Board reaffirmed a process designed to ensure that proposed and ongoing covert action programs are considered, in every case, within just such a framework. Even before the Tower Board issued its report, the President restructured the covert action decision-making process to ensure the participation of all NSC principals and the Attorney General and the transmission to the President of individual views. The National Security Council's Planning and Coordination Group has completed a comprehensive review of all covert action programs to ensure their consistency with the law, with our foreign policy, and with the executive obligation to keep Congress informed..

With this background, let me now address the amendments before this Committee. The Administration believes the existing process of congressional oversight provides adequately for timely notification and continuing consultations with the intelligence committees on covert action proposals and ongoing covert activities. In short, the Administration accepts the

Tower Board's conclusion that our recent problems stem from the failings of men, not from the system. The President has endorsed each of the Board's conclusions and recommendations, and has directed that they be fully implemented in practice. And he has taken strong action to prohibit the NSC staff from undertaking covert operations.

The Tower Board further cautioned that legislative inflexibility should be avoided. The Board "recommend[ed] that no substantive change be made in the provisions of the National Security Act dealing with the structure and operation of the NSC systems." In his message to Congress of March 31, 1987, the President endorsed this conclusion as well. He said: "I must make clear that I will strongly oppose legislation that would attempt to encroach further on what I regard as the President's independent constitutional authority in the intelligence field." In attempting to fix a system that is not broken, Congress risks impairing the effectiveness of an essential policy tool.

In the Administration's view, HR 1013 and H.R. 1371 unconstitutionally intrude into the President's authority to conduct the nation's foreign relations. In a separate submission, the Department of Justice has detailed the basis for this view. The bill would delete the current language in Section 501 of the National Security Act, which acknowledges

that the provisions of that Section are subject to the authorities and duties conferred by the Constitution on the executive and legislative branches. Of course, no statutory amendment may limit constitutional authorities and duties, but, by striking such language, such legislation would give the appearance that Congress in some fashion wishes to diminish or undermine the President's constitutional position and authority.

We believe that HR 1013 and H.R. 1371 would undermine the flexibility and discretion the President must have to carry out covert action programs. The bill would require that a copy of a written Finding be provided to certain individuals prior to the initiation of any covert operation, but, apart from the fact that provision represents an unconstitutional intrusion in the President's authority to seek advice, a point argued by the Justice Department, it may not be possible or practicable to do so in the event of an urgent need to act.

H.R. 1013 would place an absolute limit of 48 hours on the President's ability to defer notification in extraordinary cases. This requirement may not be reasonable when sensitive operations require the tightest security for the success of the mission and the safety of human lives. The 1980 Iran rescue mission is an example of such a situation.

Even a requirement for notification within 48 hours of initiation of action could pose great risk while the activity is still underway.

The Executive Branch is firmly committed to using its discretion under current law to defer notification only in genuinely extraordinary circumstances. The record should be clear that recent Administrations have not exercised such discretion lightly. Such circumstances have arisen only rarely in the past, for example in regard to the 1980 Iranian rescue effort and the Iranian arms sales of 1985-86.

Obviously, the controversy that has surrounded the 1985-86 arms sales to Iran can only heighten any President's sense of the political risk to be incurred in making such exceptions. Nevertheless, as the Justice Department explains in its letter, the Constitution recognizes and the Supreme court has held that the President must have the flexibility to act to protect the nation's vital interests. Among his duties in discharging his constitutional responsibilities in the conduct of foreign affairs is the obligation to deal with increasingly sophisticated threats to our national security. To fulfill his obligations the President must have the flexibility to conduct covert action and to delay congressional notification if extraordinary circumstances require delay.

The Administration therefore opposes the adoption of H.R. 1013 and H.R. 1377.